

REMARKS

The Examiner rejected claims 1-5, 9-21 and 23 under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 6,304,892 to Bhoj et al. (hereinafter Bhoj) in view of U.S. Patent No. 5,951,694 to Choquier et al. (hereinafter Choquier).

Regarding claims 1 and 9, the Examiner admitted that “Bhoj does not explicitly teach service level classes of services” (page 4, line 12) but indicated that “Choquier teaches the different types of on-line services or classes of on-line service, defining the set of parameters of each of class [sic] of on-line service and store in the priority table that is contained [sic] priority levels of each service (i.e., service classes) (figure 12, element 1220, col. 20, lines 32-col. 21, lines 50).”

Contrary to the Examiner’s characterization, the referenced portion of Choquier describes a service priority table and an example of a multiplexing and prioritization method which relates on-line service such as MAIL, CHAT and VIDEO GAMES with different amounts of available WAN bandwidth. (col. 19, line 66-col. 20, line 54). Applicants submit that the types of service such as MAIL, CHAT and VIDEO GAMES do not teach or suggest anything about “service level classes of service” as claimed in the present invention.

Choquier recites, for example, “[t]he service priority table 1220 contains priority levels (in the form of maximum segment lengths) for each on-line service (or class of on-line service)... The service priority table may additionally include minimum throughput requirements for certain services.” (column 20, lines 43-49). Prior to the present amendment, **Claim 1 recited “...defining service level classes of service...defining a set of parameters to be measured for each of said classes...” and claim 9 recited “...defining service level classes of service parameters according to a hierarchy of services levels...”** Applicants respectfully submit that nothing in Choquier or Bhoj suggest that the “classes of on-line service” recited in Choquier have anything to do with “service level classes of service” as claimed in claim 1 and claim 9. Rather, the context in which the “class of on-line service” is referenced in Choquier implies that

classes contain some grouping of server type which in no way suggests a service level class of service as particularly claimed.

Claim 1 is amended herein to more clearly describe the present invention. Claim 1 as amended recites, among other things, "...defining service level classes of service as a function of agreed-to service level metrics; (and) grouping at least one of host system, user, URL, hosted site, transaction, content and file type into respective service level classes of service. Claim 9 is amended herein to recite, among other things, "...defining a hierarchy of service level classes of service as a function of agreed-to service level metrics..." Applicants respectfully submit that, in view of the present amendments to claim 1 and 9, there can be no doubt that "a service level class of service which is defined as a function of agreed-to service level metrics" as particularly claimed is not analogous to a type of service such as CHAT, MAIL or VIDEO GAME, which are not defined as a function of service level metrics, and therefore such service level classes of service are not taught or suggested by any combination of Choquier and Bhoj. Accordingly, Applicants respectfully request that the rejections of independent claims 1 and 9 under 35 U.S.C. 103(a) be withdrawn.

Applicants respectfully submit that no new matter is added to the application by the present amendment. Support for the amendment including "defining service level classes of service as a function of agreed-to service level metrics is described on page 11, lines 14-17 of the application as originally filed, for example.

Applicants respectfully submit that the rejections of dependent claims 2-5, 10-21 and 23 should be withdrawn for the reasons set forth herein before with respect to independent claims 1 and 9 because no combination of Bhoj and/or Choquier teach or suggest "defining service level classes of service as a function of agreed-to service level metrics" as particularly claimed.

The Examiner rejected claims 6-8 and 22 under 35 U.S.C. 103(a) over Bhoj and Choquier in view of U.S. Patent No. 6,269,401 to Fletcher et al. (hereinafter "Fletcher").

Regarding claim 6, the Examiner admitted that “Bhoj does not explicitly teach service level classes of service and a set of acceptance levels for said collected parameters...” (page 10, lines 17-20). For the reasons set forth hereinbefore with respect to claims 1 and 9, Applicants respectfully submit that no combination of Bhoj nor Choquier teaches or suggests “a set of acceptance levels...wherein said acceptance levels depend on a service level class of service...” as particularly claimed in claim 6.

The Examiner indicates that Fletcher teaches a set of acceptance levels for collected parameters, a monitoring processor, monitoring a set of defined parameters and logging them into respective log files, and keeping track of which portions of log files have been transferred. Applicants respectfully submit that nothing in Fletcher or any combination of Fletcher with Bhoj and/or Choquier teaches or suggests “a set of acceptance levels...wherein said acceptance levels depend on a service level class of service...” as particularly claimed in claim 6. Accordingly, Applicants respectfully submit that the rejection of independent claim 6 and dependent claims 7, 8 and 22 are improper and should be withdrawn.

Since neither Bhoj, Choquier or Fletcher alone or combined teach or suggest each and every element of any of the independent claims in the present application, Applicants respectfully submit that the Examiner has not made out a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to any of the claims (1-23) pending in the present application. Accordingly, Applicants respectfully submit that each of the rejections under 35 U.S.C. § 103(a) are improper and should be withdrawn. Reconsideration and withdrawal of the rejections is respectfully requested.

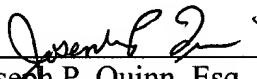
In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1-23 presently pending in the application are believed to be in condition for allowance and patentably distinguish over the art of record. An early notice thereof is earnestly solicited. If the Examiner should leave any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to contact the Applicants' undersigned attorney.

CONCLUSION

Please charge any deficiency as well as any other fees that may become due at any time during the pendency of this application, or credit any over payment of such fees to deposit account no. 50-0369. Also, in the event that any extensions of time for responding are required for the pending application, please treat this paper as a petition to extend the time as required and charge deposit account no. 50-0369 therefor.

Respectfully submitted,

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